

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

BERNARD BARBOUR,

Petitioner,

v.

CASE NO. 2:08-cv-1187

JUDGE HOLSCHUH

MAGISTRATE JUDGE ABEL

MICHAEL SHEETS, Warden,

Respondent.

OPINION AND ORDER

On May 11, 2010, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. Petitioner again argues that he was denied the effective assistance of counsel because his attorney failed to file a motion to dismiss on speedy trial grounds and failed to call witnesses on his behalf.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review. To the extent that petitioner now contends that he was denied his constitutional right to a speedy trial, and that his attorney improperly failed to file a motion to dismiss the charges on this basis, petitioner failed to present this claim to the state courts, and he has thereby waived his claim for federal habeas corpus review. *See Exhibits 16, 34 to Return of Writ; Maupin v. Smith*, 785 F.2d 135, 138 (6<sup>th</sup> Cir. 1986). Further, for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, this Court likewise concludes that petitioner's claim is waived and without merit.

Therefore, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

**IT IS SO ORDERED.**

Date: June 24, 2010

/s/ John D. Holschuh  
JOHN D. HOLSCHUH  
United States District Judge